



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

General Counsel

October 6, 2000

Duane Gibson
General Counsel
Oversight and Investigations
U.S. House of Representatives
Committee on Resources
Washington, D.C. 20515

Dear Mr. Gibson:

This letter responds to your letter of October 3, 2000, requesting the Federal Deposit Insurance Corporation to respond to specific questions and provide supporting documentation regarding the "debt-for-nature" discussions between the FDIC and Charles Hurwitz.

1. Question: Is the quote of Mr. Kroener cited in the August 17, 2000 *American Banker* accurate?

FDIC Response: A story in the August 17, 2000 *American Banker* included a quotation from me that stated, "The so-called debt-for-nature swap was first offered by Mr. Hurwitz's counsel, not the FDIC. While the FDIC has said it remained open to any appropriate settlement, including a debt-for-nature swap, it has also told Mr. Hurwitz's lawyers that the FDIC's preference is for a cash payment." This quotation is an accurate statement.

2. Question: On what date did Mr. Hurwitz, Maxxam, Pacific Lumber Company or any Representatives of this individual or these entities first raise the debt-for-nature related to Headwaters? When was the subject subsequently raised?

FDIC Response: Although the debt-for-nature swap concept had been the subject of press stories and letters to the FDIC by members of the public and Congress for some time, there had been no discussion of this issue between FDIC and Mr. Hurwitz or his representatives. In fact, the FDIC was pursuing a substantial all-cash settlement which it proposed to Mr. Hurwitz's attorney in a letter dated July 16, 1993.

On or about July 13, 1995, John Martin of the law firm Patton Boggs, on behalf of Mr. Hurwitz and Maxxam, called Allen McReynolds, Special Assistant to the Secretary of Interior, at his home at 8 p.m., urging him to contact the FDIC to begin a dialogue to resolve the FDIC's claims as part of a larger land transaction involving the Headwaters Forest that was being considered by Mr. Hurwitz and the Department of Interior. Mr. McReynolds followed up this request by calling the FDIC and met with staff of the FDIC Legal Division on July 21, 1995. It was during this meeting that the FDIC first learned of Mr. Hurwitz's

ATTACHMENT A

interest in including FDIC claims as part of the larger Headwaters negotiations. After the FDIC suit was filed in August 1995, the feasibility of Mr. Hurwitz's proposal was discussed in several meetings between the FDIC, the Council on Environmental Quality, the Department of Interior and others.

In addition, after the filing of the FDIC's lawsuit on August 2, 1995, Mr. Byron Wade, then General Counsel of Maxxam, made a number of calls over several months to FDIC Counsel Jeffrey Williams attempting to persuade the FDIC to include settlement of its claims as part of the larger government negotiations regarding the Headwaters Forest. On August 12, 1996, Mr. Thomas Boggs of the law firm Patton Boggs, representing Mr. Hurwitz, met with me and Deputy General Counsel Jack Smith and proposed to settle the FDIC and the Office of Thrift Supervision claims as part of an agreement to trade the Headwaters Forest for other government property, contingent on favorable tax rulings from the Internal Revenue Service. At that meeting, Mr. Boggs indicated that Mr. Hurwitz expected to minimize the financial impact of a settlement on Maxxam by obtaining favorable tax advantages. I advised Mr. Boggs that his proposal was unacceptable because it did not provide sufficient value to the FDIC.

On September 6, 1996, the FDIC received a letter from Mr. John Douglas of the law firm of Alston & Bird, also representing Mr. Hurwitz, requesting a settlement meeting with the FDIC and OTS to discuss a proposal that certain timber acreage be contributed to the FDIC and OTS to settle our pending claims as part of a larger Headwaters deal. At the meeting on September 11, 1996, Mr. Douglas proposed giving the FDIC and OTS land in settlement of pending claims. On this and several other occasions representatives of Mr. Hurwitz indicated that they could offer more value to the FDIC in trees than cash. Also on September 11th, the FDIC received a "Draft of Proposed Headwaters Forest Exchange Agreement" from Patton Boggs that proposed settlement of all FDIC claims as part of the larger government Headwaters exchange agreement. On September 12, 1996, the FDIC received a letter from Mr. Douglas specifically authorizing the FDIC to discuss this proposal with other agencies, including "representatives of the White House, the Department of the Treasury, the Department of Interior, the Department of Agriculture and the Justice Department [who] may all be involved in such discussions."

All proposals that linked the FDIC and OTS cases with separate negotiations Mr. Hurwitz was having with the federal government over the Headwaters Forest were rejected by the FDIC and OTS, despite Mr. Hurwitz's insistence that the FDIC/OTS claims be resolved as part of the overall agreement. The FDIC declined to participate in the negotiations regarding the Headwaters Agreement and its implementing legislation to transfer the Headwaters Forest to the U.S. government. Mr. Hurwitz eventually dropped his demand that the Headwaters Agreement contain a resolution of the FDIC and OTS claims. The acquisition of much of the Headwaters Forest was authorized by Congress in November 1997.

On February 17, 1998, Byron Wade on behalf of Maxxam, sent a letter to the FDIC proposing a settlement of all OTS and FDIC claims by transferring old growth redwoods to the FDIC. On February 19, 1998, the FDIC responded by restating its longstanding position

that FDIC's preference was to receive a cash payment. In March 1998, the FDIC informed Mr. Hurwitz's attorneys that the FDIC could not accept old growth redwoods to resolve the FDIC claims without additional legislation. His attorneys proposed ideas to solve the problem, but eventually that effort dissolved.

In summary, the possibility of a debt-for-nature swap involving the FDIC was initiated and pursued by representatives of Mr. Hurwitz beginning with an indirect contact in July 1995 and continuing into 1998. The effort dissolved in 1998 and since then there has been no further discussion of the debt-for-nature option between the parties.

3. Question: Who first raised the subject of debt-for-nature related to Headwaters on behalf of Mr. Hurwitz? To whom was the subject of debt-for-nature related to Headwaters raised?

FDIC Response: As stated in our response to Question 2, John Martin with the law firm of Patton Boggs first raised the subject of a debt-for-nature settlement on behalf of Mr. Hurwitz and Maxxam indirectly with the FDIC in a telephone call to Allen McReynolds, on or about July 13, 1995. Mr. McReynolds subsequently raised the subject with the FDIC during a meeting on July 21, 1995. This is confirmed by the depositions under oath of Mr. McReynolds and Mr. Robert DeHenzel, an attorney for the FDIC.

4. Question: What was the context in which it was raised? In what medium was it first raised (e.g. in writing, by phone, in person)?

FDIC Response: As stated in our response to Questions 2 and 3, the subject of a debt-for-nature settlement of FDIC's claims was initially raised in an after hours telephone call to the home of Mr. McReynolds by John Martin of the law firm of Patton Boggs, on behalf of Mr. Hurwitz and Maxxam. The context for this and following communications was an effort by representatives of Mr. Hurwitz to include settlement of the FDIC's claims as part of a negotiated transfer of properties by Mr. Hurwitz and Maxxam to the U.S. Government.

I have enclosed copies of relevant documents already produced to the Committee in response to your subpoena that support this response. Please do not hesitate to contact me if you have any further questions.

Sincerely,



William F. Kroener, III
General Counsel

Enclosures

cc: Honorable George Miller